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8 **UNITED STATES DISTRICT COURT FOR THE**
9 **DISTRICT OF ARIZONA**

10 Jender Enrique Reyes Gonzalez,

11 Petitioner,

12 v.

13
14 Kristi Noem, *Secretary of Homeland Security*;
15 Todd Lyons, *Acting Director, U.S. Immigration*
16 *and Customs Enforcement*; John Cantu, *Field*
17 *Office Director, Phoenix Field Office,*
18 *Immigration and Customs Enforcement*; Pamela
19 Bondi, *Attorney General*; Luis Rosa, Jr.,
20 *Warden, Florence Detention Center,*

21 Respondents.

Case No.:

**PETITION FOR WRIT OF
HABEAS CORPUS**

22 **INTRODUCTION**

23 1. Petitioner Jender Enrique Reyes Gonzalez entered the United States in
24 or around 2004. He was not encountered by immigration officials upon entry, nor
25 was he issued a Notice to Appear to commence removal proceedings. He is now
26 married and has three U.S. citizen children. Petitioner was recently detained by U.S.
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1 Immigration and Customs Enforcement (“ICE”), under facts and circumstances that
2 place him squarely within ICE’s general detention authority under 8 U.S.C. §
3 1226(a). Under that statute, Petitioner is eligible to seek release on bond from an
4 Immigration Judge (“IJ”). However, due to a new and unprecedented legal opinion
5 that overturns decades of settled law, Respondents now consider Petitioner to be
6 detained under a different detention statute, 8 U.S.C. § 1225(b)(2), which applies to
7 noncitizens apprehended at the border and does not allow release on bond.
8 Petitioner therefore brings this action seeking a declaration from this Court that he
9 is properly detained (if at all) only pursuant to 8 U.S.C. § 1226(a); and seeking an
10 order that Respondents schedule him for a bond hearing before an Immigration
11 Judge within 15 days.

16 JURISDICTION AND VENUE

17 2. This action arises under the Immigration and Nationality Act of 1952
18 (“INA”), as amended, 8 U.S.C. § 1101 et seq., and the Due Process Clause of the
19 Fifth Amendment to the United States Constitution. This Court has jurisdiction
20 pursuant to Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241
21 (general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal
22 question jurisdiction); 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act); and 28
23 U.S.C. § 1651 (All Writs Act).

24 3. Venue lies in this District because Petitioner is currently detained at
25 the Florence Detention Center, within this judicial district; and each Respondent is
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1 an agency or officer of the United States sued in his or her official capacity. 28
2 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1). In addition, John Cantu, the Field Office
3 Director for the Phoenix ICE Field Office, maintains his principal place of business
4 in Phoenix, Arizona.
5

6 THE PARTIES

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8 4. Petitioner Jender Enrique Reyes Gonzalez is a native of and citizen of
9 Honduras. He is currently detained by Respondents in Florence, Arizona.

10 5. Respondent Kristi Noem is the Secretary of the Department of
11 Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all
12 immigration enforcement in the United States.
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14 6. Respondent Todd Lyons is the Acting Director of U.S. Immigration
15 and Customs Enforcement (“ICE”). He is the head of the federal agency responsible
16 for all immigration enforcement in the United States.
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18 7. Respondent John Cantu, the Field Office Director of the U.S.
19 Immigration and Customs Enforcement (“ICE”) Phoenix Field Office, is
20 responsible for overseeing ICE operations pertaining to noncitizens within its
21 territorial jurisdiction, such as Petitioner, including detentions, enforcement, and
22 removal operations. His regular place of business is in Phoenix, Arizona. He is the
23 immediate legal custodian of Petitioner for purposes of a federal habeas petition.
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25 8. Respondent Pamela Bondi is the Attorney General of the United
26 States. The Immigration Judges who conduct bond hearings and the Board of
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1 Immigration Appeals members who decide bond order appeals do so as her
2 designees. In addition, the automatic stay regulation challenged in this lawsuit was
3 promulgated by her agency. She is sued in her official capacity.
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5 9. Respondent Luis Rosa, Jr. is the warden of the Florence Detention
6 Center in Florence, AZ. He is the immediate custodian who is currently holding
7 Petitioner in physical custody.
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9 10. All government Respondents are sued in their official capacities.
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11 LEGAL BACKGROUND

12 A. Immigration Detention Legal Framework

13 11. When a noncitizen is alleged to have violated immigration laws, they
14 are generally placed into traditional removal proceedings, during which an
15 immigration judge will determine whether they are removable, and then, whether
16 they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.
17

18 12. Detention is authorized for “certain aliens already in the country
19 pending the outcome of removal proceedings under § 1226(a) and 1126(c).” *See*
20 *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an
21 individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a)
22 generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been
23 arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has
24 been described as the “default” provision for immigration detention for those
25 subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), “[e]xcept
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1 as provided in subsection (c) of this section,' the Attorney General 'may release' an
2 alien detained under § 1226(a) 'on ...bond' or 'conditional parole.'" *Id.*

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4 13. Alternatively, mandatory detention is authorized for "certain aliens
5 *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2)," [emphasis
6 added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and
7 determined to be "applicants for admission" may be subject to mandatory detention
8 under two separate subsections. Applicants for admission include someone:
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10 "present in the United States who has not been admitted or who
11 arrives in the United States (whether or not at a designated port of
12 arrival and including an alien who is brought to the United States
13 after having been interdicted in international or United States waters)
14 shall be deemed for the purposes of this chapter to be an applicant
for admission."

15 § 1225(a)(1).

16 14. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to
17 expedited removal and mandatory detention if they are determined to be an
18 "arriving alien," and if they have not been physically present in the United States
19 continuously for a two-year period immediately prior. Regulations define an
20 "arriving alien" as:
21

22 "an applicant for admission coming or attempting to come into the
23 United States at a port-of-entry, or an alien seeking transit through
24 the United States at a port-of-entry, or an alien interdicted in
25 international or United States waters and brought into the United
26 States by any means, whether or not to a designated port-of-entry,
27 and regardless of the means of transport."

28 8 C.F.R. § 1.2.

1 15. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of
2 “applicant for admission” specifically when “the examining immigration officer
3 determines that an alien *seeking admission* is not clearly and beyond a doubt entitled
4 to be admitted, the alien shall be detained for a proceeding under section 1229a of
5 this title,” *i.e.*, for traditional removal proceedings [emphasis added].
6

7 16. An “arriving alien” or an applicant for admission “seeking admission”
8 may only be released from detention on parole (which is a form of release on
9 recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no
10 bond available to an arriving alien or applicant for admission seeking admission.
11 *Id.* There is no such thing as a “parole bond” – a release must be either parole under
12 § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*
13

14 17. For a noncitizen subject to discretionary detention under 8 U.S.C. §
15 1226(a), ICE makes an initial custody determination to either set a bond or hold the
16 individual at no bond. The noncitizen may then seek a review of ICE’s initial
17 custody determination before the IJ (a “custody review hearing”), who has the
18 authority to modify ICE’s custody determination and set bond in a case in which
19 ICE has designated no bond, lower bond when ICE has set a cash bond amount, or
20 deny bond completely. 8 C.F.R. § 1003.19.
21

22 18. Custody review hearings are separate from hearings in the underlying
23 removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the
24 IJ, she must still appear in immigration court for the IJ to determine her removability
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1 and hear any claim for relief from removal. At a custody review hearing, once
2 jurisdiction over bond is established, the IJ's inquiry is limited to whether the
3 detainee is a danger to the community or a flight risk, and bond may only be granted
4 when an IJ has determined that the detainee meets her burden of proof that she is
5 neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

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8 19. For decades, it has been Respondents' practice to afford § 1226(a)
9 discretionary bond and custody review hearings to those individuals who have been
10 encountered neither at a point of entry nor seeking admission to the United States.
11 *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099,
12 at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom.*
13 *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
14 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226
15 is also belied by the Department of Homeland Security's 'longstanding practice' of
16 treating noncitizens taken into custody while living in the United States, including
17 those detained and found inadmissible upon inspection and then released into the
18 United States with the government's acquiescence, who have committed no crime
19 after release, as detained under § 1226(a)." citing *Loper Bright Enter. v. Raimondo*,
20 603 U.S. 369, 386 (2024)).

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25 **B. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)**

26 20. On July 8, 2025, Respondent ICE issued new interim guidance that
27 announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See ICE*
28

1 memorandum “Interim Guidance Regarding Detention Authority for Applications
2 for Admission.”¹ This memo concerns the detention of “applicants for admission”
3 as defined by § 1225(a)(1). “Effective immediately, it is the position of DHS that
4 such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and
5 may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. §
6 1182(d)(5)].” *Id.* DHS is explicit that this new policy is a marked deviation from
7 prior interpretation and treatment of affected noncitizens. *Id.* (“For custody
8 purposes, these aliens are now treated in the same manner that “arriving aliens”
9 have historically been treated.”)

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13 21. In addition to the announcement re-interpreting § 1225(b)(2), the
14 memo further clarifies that “[t]he only aliens eligible for a custody determination
15 and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C.
16 § 1226(a)] during removal proceedings are aliens admitted to the United States and
17 chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the
18 exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. §
19 1226(c)].” *Id.*

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22 22. Moreover, ICE maintains that “DHS does not take the position that
23 prior releases of applicants for admission pursuant to INA § 236(a) were releases
24 on parole under INA § 212(d)(5) based on this change in legal position.” *Id.* ICE
25 fails to clarify under what legal authority, then, those prior releases were
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¹ Available at: <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited October 23, 2025).

1 effectuated. Rather, ICE signals the resulting lack of “correct” paperwork is
2 nonetheless permissible. *Id.* (“Accordingly, ERO and HIS are not required to
3 ‘correct’ the release paperwork by issuing INA § 212(d)(5) parole paperwork.”)

4
5 23. Nationwide implementation of the ICE § 1225(b)(2) mass detention
6 policy ensued.

7
8 **C. Recent BIA decision *Matter of Yajure Hurtado***

9 24. On September 5, 2025, the Board of Immigration Appeals (BIA),
10 which oversees all appeals of IJ decisions including custody redeterminations,
11 upheld ICE’s re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. &
12 N. Dec. 216 (BIA 2025).

13
14 25. The BIA held that the respondent was an “applicant for admission”
15 within the scope of § 1225(b), and therefore subject to mandatory detention.

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17 26. The BIA characterized the issue before it as “one of statutory
18 construction: Does the INA require that *all* applicants for admission, even those like
19 the respondent who have entered without admission or inspection and have been
20 residing in the United States for years without lawful status, be subject to mandatory
21 detention for the duration of their immigration proceedings, and thus the
22 Immigration Judge lacks authority over a bond request filed by an alien in this
23 category?” [emphasis added]. *Id.* at 220.

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26 27. The BIA reasoned that individuals “who surreptitiously cross into the
27 United States remain applicants for admission until and unless they are lawfully
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1 inspected and admitted by an immigration officer.” *Id.* at 228.

2 28. The BIA acknowledged the decades of precedent preceding its
3 decision that authorized release of individuals present without having been
4 inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 (“We
5 acknowledge that for years Immigration Judges have conducted bond hearings for
6 aliens who entered the United States without inspection. However, we do not recall
7 either DHS or its predecessor, the Immigration and Naturalization Service,
8 previously raising the current issue that is before us. In fact, the supplemental
9 information for the 1997 Interim Rule titled ‘Inspection and Expedited Removal of
10 Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
11 Asylum Procedures,’ 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the
12 Immigration and Naturalization Service took the position at that time that ‘[d]espite
13 being applicants for admission, aliens who are present without having been
14 admitted or paroled (formerly referred to as aliens who entered without inspection)
15 will be eligible for bond and bond redetermination.’”)

16 29. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction
17 under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.*
18 at 229.

19 30. The BIA decision is binding on all immigration judges nationwide.

20 31. Respondents’ new policy and interpretation of 8 U.S.C. § 1225(b)(2)
21 stand to sweep millions of noncitizens into mandatory detention, without any
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1 consideration for release on bond (regardless of their ties to their community or lack
2 of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 (“It has been
3 estimated that this novel interpretation would require the detention of millions of
4 immigrants currently residing in the United States.”).

6 **FACTS**

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8 32. Petitioner entered the United States without inspection between ports
9 of entry, across the U.S.-Mexico border, in or around 2004. He was neither
10 encountered by immigration officials nor issued a Notice to Appear upon entry.
11

12 33. Petitioner then made his way to Maryland, where he established a
13 peaceful family life. He is married and now has three U.S. citizen children.

14 34. On Saturday, October 18, Petitioner was driving to work with several
15 coworkers when they were randomly stopped by ICE agents in Baltimore and
16 detained. He was taken into immigration custody without prior notice or warrant
17 and subsequently transferred to the Florence Detention Center in Florence, AZ. *See*
18 ICE Detainee Locator information (available at <https://locator.ice.gov/> (last visited
19 on November 6, 2025)):
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Official Website of the Department of Homeland Security
 U.S. Immigration and Customs Enforcement
 Report Crimes: Email or Call 1-866-DHS-2-ICE
 Home Who We Are **What We Do** Newsroom Information Library Contact ICE

< BACK TO RESULTS

Facility Page

Detention Information For:
JENDER ENRIQUE REYES GONZALEZ
 Country of Birth: Honduras
 A-Number: [REDACTED]

Current Detention Facility:
 FLORENCE CORRECTIONAL CENTER
 1100 BOWLING ROAD
 FLORENCE, AZ 85132
 Visitor Information: (520) 868-9095

MORE INFORMATION >

Related Information

Helpful Info

- Status of a Case
- About the Detainee Locator
- Brochure
- ICE ERO Field Offices
- ICE Detention Facilities
- Privacy Notice

External Links

- Bureau of Prisons Inmate Locator

35. Petitioner has pending removal proceedings (his Master Calendar Hearing is scheduled for November 17, 2025) and is not subject to a final order of removal. See EOIR Automated Case Information (available at <https://acis.eoir.justice.gov/> (last visited on November 6, 2025)):

Home > REYES GONZALEZ, JENDER ENRIQUE [REDACTED]

Automated Case Information

Name: REYES GONZALEZ, JENDER ENRIQUE | A-Number: [REDACTED] | Docket Date: 11/5/2025

Next Hearing Information

Your upcoming MASTER hearing is on November 17, 2025 at 8:30 AM.

JUDGE
 Guerrero, Marni

COURT ADDRESS
 3260 NORTH PINAL PARKWAY
 FLORENCE, AZ 85132

Court Decision and Motion Information

This case is pending.

BIA Case Information

No appeal was received for this case.

Court Contact Information

If you require further information regarding your case, or wish to file additional documents, please contact the immigration court.

COURT ADDRESS
 3260 NORTH PINAL PARKWAY
 FLORENCE, AZ 85132

PHONE NUMBER
 (520) 868-3341

1 36. Petitioner's wife and three U.S. Citizen children, ages 9, 16, and 18,
2 have suffered tremendously since his arrest. All of them have faced difficulties in
3 their day-to-day activities, and the youngest child asks about his father and cries
4 frequently. They are all growing increasingly worried about his well-being in
5 detention, particularly since Petitioner has reported losing approximately 15 pounds
6 since entering detention less than three weeks ago. Further, Petitioner was the
7 family's sole earner. Petitioner's wife struggles to stand, walk, or lift any weight,
8 and has been unable to work due to chronic medical issues, having had to undergo
9 several pelvic surgeries in recent years. Petitioner's elderly parents depended on his
10 financial contributions to make ends meet for their household as well, as they both
11 manage incapacitating health issues. The family's expenses are piling up, and they
12 are unsure of how to account for the drastic loss in income after Petitioner's
13 detention.

14 37. All Respondents consider that Petitioner is detained pursuant to 8
15 U.S.C. § 1225(b). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
16 Accordingly, it would be futile for Petitioner to request a bond from an Immigration
17 Judge. Exhaustion of administrative remedies would therefore be futile.

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24 **CAUSES OF ACTION**
25 **FIRST CLAIM FOR RELIEF:**
26 **Declaratory Judgment**

27 38. Petitioner re-alleges and incorporates by reference the preceding
28 paragraphs 1-37.

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41. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-37.

42. Since Petitioner is not applicants for admission “seeking admission” or “an arriving aliens” subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2), and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

43. Respondents’ actions, as set forth herein, violate Petitioner’s statutory right to a bond redetermination hearing in front of an immigration judge.

**THIRD CLAIM FOR RELIEF:
Detention in Violation of Due Process**

44. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-37.

45. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

46. After entering the United States unlawfully, Petitioner developed ties to the community over the course of more than twenty years. Petitioner is therefore a “person” within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution and has a liberty interest in freedom from physical restraint.

Dated: November 7, 2025

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CERTIFICATE OF SERVICE

I, Lauren Hodges, hereby certify that on this 7th day of November, 2025, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

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of Arizona
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Phoenix, AZ 85004

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